

retained in accordance with the disposition schedule for inspection program records.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977 and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46069, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

§ 55.390 Advance information.

Upon request of an applicant, all or part of the contents of any certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

APPEALS

§ 55.400 Who may request an appeal grading or inspection or review of a grader's or inspector's decision.

An appeal grading or inspection may be requested by any interested party who is dissatisfied with the determination by a grader or inspector of the class, quality, quantity, or condition of any product, as evidenced by the USDA inspection mark and accompanying label, or as stated on a certificate and a review may be requested by the operator of an official plant with respect to a grader's or inspector's decision or on any other matter related to grading or inspection in the official plant.

§ 55.410 Where to file an appeal.

(a) *Appeal of resident grader's or inspector's grading or decision in an official plant.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which was graded or inspected by a grader or inspector in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by a grader or inspector on any other matter relating to grading or inspection in such plant may request an appeal grading or inspection or review of the decision by the grader or inspector by filing such request with the grader's or inspector's immediate supervisor.

(b) *All other appeal requests.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was

graded or inspected or which was graded or inspected other than in an official plant may request an appeal grading or inspection by filing such request with the Regional Director in the region where the product is located or with the Chief of the Grading Branch.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49168, Sept. 21, 1995]

§ 55.420 How to file an appeal.

The request for an appeal grading or inspection or review of a grader's or inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal grading or inspection site shall be provided to the appeal grader or inspector assigned to make the appeal grading or inspection.

[60 FR 49168, Sept. 21, 1995]

§ 55.430 When an application for an appeal grading or inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, class, quality, quantity, or that the condition of the product has undergone a material change since the original grading or inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal grading or inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for refusal.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49168, Sept. 21, 1995]

§ 55.440 Who shall perform the appeal.

(a) An appeal grading or inspection or review of a decision requested under § 55.410(a) shall be made by the grader's

Agricultural Marketing Service, USDA

§ 55.510

or inspector's immediate supervisor or by a licensed grader or inspector assigned by the immediate supervisor other than the grader or inspector whose grading or inspection or decision is being appealed.

(b) Appeal gradings or inspections requested under § 55.410(b) shall be performed by a grader or inspector other than the grader or inspector who originally graded or inspected the product.

(c) Whenever practical, an appeal grading or inspection shall be conducted jointly by two graders or inspectors. The assignment of the grader(s) or inspector(s) who will make the appeal grading or inspection under § 55.410(b) shall be made by the Regional Director or the Chief of the Grading Branch.

§ 55.450 Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the grading or inspection being appealed was performed and must have been maintained under adequate refrigeration, when applicable.

(b) *Laboratory analyses.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) *Condition inspection.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49168, Sept. 21, 1995]

§ 55.460 Appeal certificates.

Immediately after an appeal grading or inspection is completed, an appeal certificate shall be issued to show that the original grading or inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the prod-

uct involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader or inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49168, Sept. 21, 1995]

FEES AND CHARGES

§ 55.500 Payment of fees and charges.

(a) Fees and charges for any service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and §§ 55.510 through 55.560, both inclusive. If so required by the grader or inspector, such fees and charges shall be paid in advance.

(b) Fees and charges for any service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to AMS.

(c) Fees and charges for any service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

[36 FR 11795, June 19, 1971, as amended at 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 55.510 Fees and charges for services other than on a continuous resident basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service (other than for an appeal) performed, in accordance with this part on a fee basis shall be based on the applicable rates specified